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GENERAL HEADINGS.

Current Topics.

Mid-Vacation.

THE LONG VACATION has deep roots in English Legal History and in the English character. Whether an iconoclastic age will ever sweep it away, offered up as a sacrifice to the MOLOCH of Modern Industrialism, no one can say. But while it lasts, it is a very sweet and pleasant thing! The Inns of Court wear something of the aspect of eternal peace, for a brief season, once each year. Their wonderful gardens seem even more wonderful than at other times of the year. They remind one of MATTHEW ARNOLD'S famous epigram about the lawns of English country houses, which look as if they had been "rolled and rolled" ever since the Norman Conquest. The Law owes not a little of its dignity and the reverence which the plain man in the street pays the lawyer, to just these touches of the picturesque and the romantic which still surround the profession. Round about the Temple, the country cousin, the overseas visitor to the "Old Home," and even the non-reverential American, still can feel

> "The moan of doves in immemorial Elms,
> and murmuring of innumerable bees."

May these things last so long as possible: for when they go, something will have left the legal profession, which cannot be replaced!

Staple Inn.

LAST YEAR we ventured to suggest that the Law Society or the Solicitors' Company might make an effort to acquire STAPLE INN. We are reminded of our wish by reading in an American Magazine a lady's rapturous account of this little ancient Inn. She stumbled on it quite by accident, unguided by any book or the advice of any friend. She felt that here was a breath of ELIZABETHAN ENGLAND, or of VERSAILLES in the days of the ANCIEN REGIME. The quiet court, the stately little hall, the quaint steps, the antiquated balustrade—all seemed a revelation of Old Legal London, hid away near busy HOLBORN. Yet this delightful spot remains desecrated in commercial hands, patent-offices and patent-agents, insurance companies, even shops and commission dealers. Surely it ought to be rescued out of such keeping and be restored to its ancient dignity as an Inn of Chancery—one of the Inns devoted to solicitors and law students! One feels that *some* body of lawyers should seriously consider the matter; and we respectfully commend it to the attention of the Solicitors' Company. Such a dignified habitation would grace any City Company. And even as a commercial proposition it would probably not prove a bad investment.

Astor House and the Embankment.

ANOTHER PROJECT very dear to many hearts, which becomes an eager expectation and a hot desire each recurring Long Vacation, is that the LAW SOCIETY should make some effort to acquire for the profession either ASTOR HOUSE or the Old Office of the London County Council Education Committee—preferably both. These buildings are now in search of a new tenant. They are beautiful places, divinely built, and seated in one of the prettiest parts of the Embankment, just outside the Middle Temple. One of these would make an admirable Law Library; the other a magnificent College of Law. Of course, to acquire them would be costly. But the profession to-day has its full quorum of solicitor-millionaires, most public-spirited men who contribute readily to all national or charitable objects. Were the LAW SOCIETY to organize a building fund, sooner or later the sum required could be raised. The status of a profession depends much, like that of a City or a Nation, on the magnificence of its public buildings. For it is enhanced by visible proofs of genuine corporate spirit in its members, and there is no other visible proof of such corporate spirit nearly so great as the endowment of the community with worthy edifices. THUCYDIDES tells with enthusiasm how the Athenians did not build fine private houses each for himself, but preferred to raise noble public halls. The Medieval Church gained a large part of its prestige from the splendid abbeys and churches it built. We are not stirred when we read of a wealthy solicitor acquiring a palace in PARK LANE or MAYFAIR; but we would be genuinely impressed if one, or a group of such, were to present to his order the fine buildings we have mentioned.

A New School of Law.

THE LEARNED correspondent to whom we were indebted last week for a note on Legal Education has supplied us with a few further observations on the same subject. The Law Society, he suggests, now that it has gained increased powers as a teaching body, ought to seize this opportunity of transforming its School of Law into a college preparing students for the LL.B. degree of London University, as well as for Solicitors' Examinations. This could easily be done, since nine-tenths of the subjects are much the same. And it should be an easy matter to get the Senate of London University to recognise such a College as one of the recognised Schools of the University. Public opinion, outside the academic world, is generally ignorant of the complete transformation of London University since its reform in 1900. Prior to that year, London University was a mere examining body; its colleges had no special academic authority. But in 1900 the University was divided into two parts, conferring two degrees, the External and the Internal. The former is ceasing to be of much importance. The latter is conferred, as at other Universities, upon students who attend collegiate lectures, share in collegiate life, and are subject to college discipline. There are now some twenty of such colleges or University Schools scattered over Central or West London, and several of them are residential colleges, *e.g.*, Bedford, Holloway, and King's College for Women (Kensington). Special colleges exist for special professional or expert branches of study; there are several Schools of Medicine and Divinity, one of Education, and one of Economics. The time is ripe for a special college devoted solely to the Higher Teaching of Law. At present, Law is spread in driblets over four colleges, each with a teacher or two, and a class or two; this is most unsatisfactory, and ought to be replaced by concentration in one special college. If the Law Society, with its admirable staff of lecturers, acquired a separate building and installed a complete set of LL.B. courses, it is morally certain that the Senate would cheerfully grant them admission to the University as the "School of Law." We have only to add that the acquisition of ASTOR HOUSE would be admirable for the purpose.

The Value of Inquests.

DESPITE SHAKESPEARE'S famous sneer at "Crowners' Quest Law," most Englishmen feel that coroners' inquests are very valuable institutions. The absence of these inquests in SCOTLAND, except in Workmen's Compensation fatal accidents, for which a recent statute made some provision, is one of the defects in the otherwise admirable legal machinery which exists over the Border. This is exemplified by the LOCH MAREE disaster, of which we were all reading last week-end. Here eight persons die suddenly of eating picnic sandwiches. It is most important that a searching public medical investigation should be made, which will guide and warn all concerned as to the causes and dangers of such tragic happenings. In England, there would be a coroner's inquest as a matter of course. It would be held in public. Every person who had any assistance to give, amateur or expert, would be cordially welcome to attend and volunteer his testimony. The coroner, an experienced medical practitioner in nearly all cases, would investigate and make a valuable finding as to the cause. But in Scotland there is none of this, unless the Lord Advocate or the Secretary for Scotland put special machinery in motion and hold a public Court of Enquiry—a costly and cumbrous method. Failing this, the only investigation of a legal nature is a private enquiry by some clerk in the office of the Procurator-Fiscal, who asks each probable witness to call at any convenient time at his private office, and there takes down on a written form anything he may have to say. Questions are sometimes asked, but there is nothing in the nature of cross-examination. The public are not admitted; the parties are not represented. Evidently the English system is much more satisfactory.

Acknowledgment of Debt.

THE RULE with regard to the nature of the acknowledgment which will keep alive the right of action on a simple contract debt is well settled, though, as the recent case of *Spencer* v. *Hemmerde* (*Times*, 29th July) shows, there may be a good deal of difficulty in applying it. Previously to *Tanner* v. *Smart* (6 B. & C. 603) it was doubtful whether a mere admission of the claim was sufficient, or whether the acknowledgment must amount to a promise to pay; but that case settled that the acknowledgment will only keep the right of action alive if the acknowledgment amounts to a fresh promise to pay. The difficulty is in deciding whether in the particular case the words used—which must under the Statute of Frauds Amendment Act, 1828, s. 1, be in writing—amount to such a promise. An unqualified acknowledgment is sufficient on the ground that it implies a promise to pay; but if there is any language controlling the acknowledgment, then it must be possible to infer from the entire document a promise to pay: *Green* v. *Humphreys* (26 Ch. D. 474, 478). Thus a promise to pay as soon as the debtor is able is not an acknowledgment giving an immediate right of action. Evidence of ability must first be given: *Tanner* v. *Smart* (*supra*); *Re Bethell* (34 Ch. D. 561). But in general, an acknowledgment accompanied by a hope that the debt will be paid, or a desire to pay it, is not construed as conditional: *Gardner* v. *M'Mahon* (3 Q.B. 561); *Parson* v. *Nesbitt* (60 SOL. J., 89; 85 L.J. K.B. 654); *Fettes* v. *Robertson* (37 T.L.R. 80). In the present case, words in letters, which clearly admitted the debt, were accompanied by qualifying expressions; in particular, by the words "It is not that I won't pay you, but that I can't do so," and in the Court of Appeal (65 SOL. J., 662, BANKES and ATKIN, L.JJ., SCRUTTON, L.J., dissenting), it was held, reversing BAILHACHE, J., that there was no sufficient acknowledgment; that is, that no absolute promise to pay could be implied. But the House of Lords (Lords CAVE, ATKINSON, SUMNER, WRENBURY, and CARSON) have unanimously reversed the Court of Appeal and restored the judgment of Mr. Justice BAILHACHE. It is a little curious that the statement "I owe the money, but I can't pay it" should be more effective than "I cannot pay the debt at present, but I will pay it as soon as I can" (see *Tanner* v. *Smart*, *supra*; *Scales* v. *Jacob*, 3 Bing. 638) to involve the debtor in new liability; but the reason doubtless is that a mere denial of present ability to pay goes for nothing; it is not an uncommon position; a promise to pay on future ability is a special promise, and its effect is postponed accordingly.

The New Index to the Middlesex Deeds Registry.

WE ARE officially informed that a new form of index will shortly be introduced at the Middlesex Deeds Registry, which, it is anticipated, will save the time of a searcher very considerably and also make for accuracy in searching. The index at present in use consists of large books—four volumes to each year. Where a search covers several years, the mere taking down and replacing of the books on the shelves is a considerable labour. Added to this, very close attention has to be given to the entries, as they are written by hand on parchment, every page contains a great many names, and there is also, unavoidably, some variation in the writing from year to year. The new form consists of type-written pages in a small book, each name having a separate page and the pages being arranged in strictly lexicographical order. When the new system is in full working order each book will contain the entries for a series of years—at least seven, and possibly ten or more years. A searcher in future will, therefore, only have to look at one book and one page in that book to see all the entries against his man for the whole period covered by the book. At first this will be for the past three years—1920, 1921 and 1922. In effect, it is an adaptation of a card index to book form so as to permit of its use by the public. The present system of indexing also necessitates the use, during the whole of each current year, of a temporary index. This, though open to objection in various ways, is at present unavoidable, as the preparation of the permanent index cannot be begun until the year is closed. Under the new system no temporary index will be required. A series of new forms for memorials has also been prepared and will be issued shortly. Their purpose is to assist the practitioner in preparing the memorial and at the same time to conduce to uniformity, a point which will be appreciated by those who have to peruse many memorials.

The Day's Work of a Judge.

Mr. JUSTICE HILL has recently pointed out that in the Probate, Divorce and Admiralty Division, judges are unable to get any leisure at all in term-time. When not sitting in court, their whole time is occupied with perusing the papers incidental to the cases and with preparing their judgments. The other day the same learned judge stated that he had to break the Sabbath by reading court documents all day long. And next he pointed out, what most lawyers as well as laymen probably overlook, the heavy labour imposed on judges whenever they deliver a considered and written judgment; it is necessary to draft the judgment without the assistance of a shorthand stenographer—a work of wearisome labour. Mr. JUSTICE HILL, we think, has done well in drawing public attention to the nature of extra-judicial labours. Most laymen imagine that the work of a judge is over at 4 p.m., when he rises for the day. They do not realise that a judge must look up his law and arrange his notes at some stage of the case, and he can seldom find an interval to do so during the actual trial—except in a jury case when counsel are delivering their concluding speeches, which he can often skip without public damage—so that his evenings must be devoted to this laborious work. Again, the public at large seldom realise the fatigue and effort involved in taking down, for five hours each day a careful note of the evidence and the arguments adduced in court. The necessity of Sunday work is, of course, nothing new. The late Lord SWINFEN (then SWINFEN EADY, J.), referred to it in his evidence before the Commission on Delay in the King's Bench Division of 1913, and in order that the amount of work which a judge has to do out of Court might be known. Indeed the reading of papers in order to enable a Chancery judge to dispose expeditiously of Monday morning's chamber work—at least when the list is a long one—is perhaps one of the heaviest of a judge's tasks.

The Sale of Minerals separately from the Surface.

THE DECISION of the Court of Appeal in *Re Chaplin's Contract* (*Times*, 28th July; 1922, W.N. 260) restores the decision of NEVILLE, J., in *Re Cavendish & Arnold's Contract* (56 SOL. J., 468; 1912, W.N. 83), that an executor can sell minerals apart from the surface, and confirms the view recently advocated by a learned writer in these columns (*ante*, pp. 518, 534), that an executor's powers are not subject to the same restrictions as the powers of a trustee. The power of a trustee to sever the surface and minerals upon a sale was negatived in *Buckley* v. *Howell* (29 Beav. 546), but was confirmed as to past transactions by the Confirmation of Sales Act, 1862, while for future transactions that statute made the sanction of the court necessary. The substituted provision to the like effect in the case of a "trustee" was made by s. 44 of the Trustee Act, 1893, and since the expressions "trust" and "trustee" were defined by this statute to include "the duties incident to the office of personal representative" an opening was given for the argument that an executor was subject to the like restrictions as a trustee, and could not sell the minerals separately save with the sanction of the court. In the case before NEVILLE, J., this definition appears to have been overlooked, and in *Re Wicksted's Trusts* (1921, 2 Ch. 184), RUSSELL, J., declined to follow *Re Cavendish*, and held that an executor was within s. 44 and that a sale of minerals by him separately required the sanction of the court: and the same view was taken by SARGANT, J., in *Re Chaplin's Contract* (1922, W.N. 156). But the Court of Appeal have preferred the view originally taken by NEVILLE, J., and have affirmed the power of an executor to sell the minerals separately—a power which is not taken away by the Trustee Act, assuming that s. 44 applies to an executor so as to enable him to obtain the protection of the court under it. But, of course, if he has the power of sale as executor he is entitled to obtain protection in its exercise under the ordinary jurisdiction of the court. There is apparently the qualification that the mode of sale must be an ordinary one in the district, but this is always so in recognised mining districts. In an experimental district, recourse to the court would, no doubt, be advisable.

The Scots and English Bars.

SOME SURPRISE has been expressed in legal circles at a rumour appearing in certain quarters of the daily press to the effect that Sir ROBERT HORNE had been considering at one time whether or not he would abandon politics for the Scots judicial bench by acceptance of the vacant office of Lord Justice Clerk. This is the second highest office in the Court of Session—and corresponds to that of Lord Chief Justice of England in status and dignity. It is one of the two great prizes of the Scots Bench and there is not really anything surprising in an eminent Scots advocate giving at least careful thought to the question whether he should accept it. After all, when Lord MANSFIELD had the premiership in his grasp, he deliberately preferred the office of Lord Chief Justice—the equivalent English dignity. And Lord Chief Justice HEWART, another successful lawyer-politician, has recently insisted on following the same precedent—much against the wishes of his political chief. But the difficulty which English legal circles feel in seeing that the office of Lord Justice Clerk is a perfectly reasonable equivalent, from the standpoint of a career, for that of the Chancellorship of the Exchequer, is due to another cause. They look on Edinburgh as a provincial town, and do not quite realise that the great dignitaries of the Scots Bench hold a position in Scotland even greater than do their English colleagues in England. The Scots Bench and Bar, as a matter of fact, pursue their careers in almost ideal surroundings. Edinburgh is a capital city, not a provincial town, with a culture and intellectual resources quite comparable with those of London or Paris or Washington. Its legal traditions have a romance and a picturesqueness quite as great as that of the Inns of Court. And the city, with its beautiful precincts and romantic environment of scenery is one of the most charming places in the world in which to spend one's life. As a matter of fact the Scots youth whose ambitions are purely legal always prefers the Scots to the English Bar. It is political ambition, not legal ambition, nor love of metropolitan life, which brings so many young Scotsmen to the Inns of Court. For an English lawyer, whether

barrister or solicitor, can easily combine politics with a career at the Law; he can begin both together. But a Scots advocate loses all his work when he enters the House of Commons, so that he cannot think of a seat in Parliament until he is middle-aged. This really is the superior attraction of the English profession.

An Interesting Parallelism.

We have drawn a parallel above between the career of Sir Robert Horne and Sir Gordon, now Lord, Hewart. The parallelism is interesting because of many common facets in the careers of each of those successful men. Each commenced life with a very distinguished academic career and adopted an intellectual profession, rather than a practical one. Lord Hewart became a journalist on the *Manchester Guardian* and Sir Robert Horne a University Lecturer on Philosophy. But each soon abandoned the world of "intellectualism," for that of the law, and each achieved immediately the same even and high success. Sir Robert had achieved before the war practically the foremost position at the Scots Bar, and Lord Hewart was outpaced only by such great names as Sir Edward Carson and Sir John Simon. Each came to politics rather late in life, entering the House of Commons when nearer fifty than forty years of age. Each at once attained immense success as a debater and a man of ripe, shrewd judgment. The one became Attorney-General; the other became Chancellor of the Exchequer. Each had then to make the great choice—Bench or politics. The Englishman has chosen the cautious course, where the canny Scot—rather a reversal of natural characteristics—has elected to remain in the stormy world of the House of Commons.

The Civil Service Examinations.

Since the administrative and clerical staffs of the Law Courts and other Judicial Offices are in future to be graded, paid, and pensioned as civil servants, lawyers are necessarily interested in the new regulations for the competitive examination of civil service candidates. Grades I. and II., the Administrative and Executive Grades, have not yet been made the subject of this examination; they are still subject to special post-war arrangements for the examination of temporary clerks. But a Regulation of 23rd August, 1922, prescribes the ages, subjects, and marks for the permanent competitive examinations for Grade III., the clerical class. The age limits are sixteen to seventeen. This accounts for the fact that the subjects do not include either Elementary Law or Elementary Economics—which should be useful in the Civil Service. They do include Science, Mathematics, and one foreign language, which may be either Latin, French, German, Greek, Welsh, Scottish Gaelic, or Irish Gaelic. We do not quite see why on earth *Irish* Gaelic should now be included, whatever may be said about Welsh and Scots Gaelic.

The Law of Property Act, 1922.

VII.

ESTATE OWNERS AND EQUITABLE INTERESTS.

Before commencing this article we should like to welcome the first book on the new Act which, so far as we are aware, has been published.* All practitioners will have to study the Act, and they, as well as ourselves, will find great assistance in the Guide which Dr. Wilkinson has prepared.

We have several times noticed the resemblance between the new system of conveyancing and transfer under the Land Transfer Acts. The idea at the root of each is the same, namely, that there shall be a proprietor who is able to dispose of the land to a purchaser so as to override all equitable interests; but while on the register equitable interests can be protected by suitable entries—cautions, inhibitions and restrictions—there is no corresponding means for protecting them off the register, and a good many of the new provisions are concerned with providing substituted machinery. The term "proprietor" under registration of title becomes "estate owner" under the Act, and with that we will deal first.

The Estate Owner.—We have already noticed (*ante*, p. 644) the new distinction which is made between legal and equitable estates. Legal estates are confined to the fee simple in possession, and terms of years absolute; we need not at present notice the other legal interests permitted by s. 1; all other estates and interests are equitable interests. And the person in whom a legal estate is vested is called "the estate owner": s. 188 (13). There can, of course, be two or more estate owners in respect of the same land; thus, where the fee simple is subject to a term of years, there is an estate owner of the fee, and an estate owner of the term; and s. 1 (3) expressly provides that "a legal estate may subsist concurrently with or subject to any other legal estate in the same land", each, therefore, having an estate owner. This provision was doubtless inserted as a precaution, for the simultaneous existence of legal estates is obviously authorised by s. 1 (1). But while there can be only one freehold legal estate—the fee simple—there may be any number of leasehold legal estates existing at the same time. In the remarks which follow, it will in general be assumed that the legal estate in question is the fee simple.

The estate owner may hold his estate in various capacities: on his own account beneficially, whether subject or not to equitable interests; as a personal representative; as a trustee, whether for sale or not; or as the *dominus pro tempore* of settled land. In the last case the estate owner will usually be the tenant for life or a person having the powers of a tenant for life; it should be noticed that both are included in the Act under the expression "tenant for life of full age" (s. 188 (21)); but if the tenant for life is an infant, or if there is no tenant for life, then the trustees of the settlement have the powers of a tenant for life (s. 56 (2)), and they are denoted "the statutory owner" (s. 188 (22)). It is necessary to understand the exact meaning of this term, since it is of frequent occurrence in the Act. The settled land will, under such circumstances, be vested in the statutory owner (see sched. V, s. 2 (1) (*a*)). A trustee who does not hold on trust for sale will usually hold on the trusts of a settlement. If he is a trustee for charitable, ecclesiastical, or public trusts or purposes, then the land is settled land (s. 26 (1)), and he is statutory owner. The case where a person with no beneficial interest holds as trustee neither for sale nor under a settlement does not seem to be specially provided for, and is, perhaps, not of importance. Thus estate owners may be distinguished as beneficial owners free from equities, beneficial owners subject to equities, personal representatives, trustees for sale, tenants for life, and statutory owners.

The Estate Owner and Equitable Interests.—The Act purports to make provision for the enforcement of equitable interests. Thus s. 4 runs:—

> "4. *Enforcement of Equitable Interests and Powers.*—All equitable interests and powers, whether created before or after the commencement or by virtue of this Act, shall be enforceable against the owner of the estate affected (other than a purchaser of a legal estate taking free therefrom) in the manner provided in the second part of the First Schedule to this Act."

Turning to Part II of this Schedule, it will be seen that the title "Enforcement of Equitable Interests" is hardly correct. What Part II does is to declare successively the liabilities of the various estate owners mentioned above towards their *cestui que trusts*, or other persons having equitable interests. The position with regard to personal representatives is not clearly expressed, for in one place they are mentioned separately from trustees for sale, and in another appear to be classed with them (see s. (1), commencement, and para. (i)). Apparently it is assumed that personal representatives can sell otherwise than for purposes of administration; but while this is so under the new

*A Guide to the Law of Property Act, 1922. By W. E. Wilkinson, LL.D. (Lond.), a Solicitor of the Supreme Court. The Solicitors' Law Stationery Society, Ltd. 5s. By post 5s. 9d.

provisions for intestacy (s. 147 (1)), we have not found any provision constituting executors as trustees for sale. Subject to this qualification, personal representatives and trustees for sale are to hold the net proceeds of sale upon trust to give effect " to the equitable interests and powers affecting the same according to their respective priorities " : s. (1), para. (i). This appears to be only declaratory of the law, and this part of Schedule I seems, indeed, to be mainly declaratory. Thus, similar provision is made that the tenant for life or statutory owner shall hold the settled land (s. (1), para. (iii)) upon trust to give effect to the equitable interests, and that a beneficial owner—for such an estate owner seems intended by s. (2)—shall be liable to give effect to equitable interests affecting his estate. Possibly the provisions in Part II for raising money, or for creating legal estates in priority to the trust for sale (see s. (1), paras. (ii), (iv)) may be required; but in general, as we have said, Part II of Schedule I is only declaratory, and has probably been inserted in order to give completeness to the scheme of arrangement of legal and equitable interests.

Beneficial Owners Setting up Settlements.—The case of an estate owner who is subject to equities has been mentioned above, but, as " A Conveyancer " pointed out in a letter recently (*ante*, p. 647) the provision which is made for it is an important feature of the Act. This is s. 53 (2), and the effect is that a beneficial owner, who is entitled subject to equitable interests, may by taking the steps prescribed in the sub-section turn his land into settled land and thereby, provided there are trustees for the purposes of the Settled Land Acts, sell the land free from the equitable interests. But the full consideration of this very interesting provision we must postpone.

(*To be continued.*)

A Great Caledonian Advocate.

England and Scotland are linked together so closely, being now the only two primary constituents of the British Empire, as distinct from Dominions and Colonies, that no apology is needed for an appreciation in *The Solicitors' Journal* of the great Scots advocate and judge who died a fortnight ago, the Lord Justice Clerk of the Court of Session, Lord Scott Dickson. In the Kingdom north of the Tweed, the Supreme Courts of civil and criminal purposes are in theory distinct, but are in fact composed of the same members. The Court of Session is the supreme civil judicature, and the High Court of Justiciary is the supreme criminal tribunal; but each Lord of Session is also a Lord of Justiciary and the Lord President of the Court of Sessions presides as Lord Justice General over the First Division of the Inner House (*Anglicé*, Court of Appeal) of the Court of Session as well as over the High Court of Justiciary. The Lord Justice Clerk presides over the Second Division of the Inner House. Both Lord President and Lord Justice Clerk, therefore, enjoy equal prominence in the public eye, and have an equal share in the direction of important judicial business. Any occupant of either seat, therefore, holds a great place in the reverence and affection of Scotsmen, by whom—just because the capital is not the seat of the Royal Court and of Parliament—their Supreme Court and its Judges are regarded as the social, not less than the legal, leaders of the nation. The death of a great judge, and of a great advocate, therefore, is somewhat of an event in Scotland.

Lord Scott Dickson had been for over a generation one of the great figures of Scots national life. Unlike most Scots advocates, he commenced life as a solicitor, or writer, as the profession is named in many parts of Scotland. He is therefore one of the many eminent judges, both in England and in Scotland, who have had personal experience of success in both branches of the legal profession. Scott Dickson went on to the Bar after a few years of practice as a solicitor. He jumped into fame at once. By a lucky chance, he was briefed on behalf of one of the parties in the famous City of Glasgow Bank trial, in which the directors of that unfortunate bank were placed on trial for fraud after its failure. He there showed two great gifts, a remarkable skill in the comprehension of commercial documents and business transactions, as well as great ingenuity and eloquence as a young advocate. In fact, he combined in himself the genius of Rufus Isaacs with that of Sir Edward Clark and Sir Edward Marshall Hall. In those days, the Scots Bar possessed an array of forensic giants, men who would have been eminent in England or any country of the world. Graham Murray (now Lord Dunedin), Blair Balfour (long Mr. Gladstone's Lord-Advocate), and Alexander Asher, each of these men deserves a place among the greatest forensic gladiators of all time. Scott Dickson was the only man at the Scots Bar who could face those intellectual Goliaths. He did so, unashamed and unafraid. And so success came his way.

Distinction came early to Scott Dickson. In 1892 he was made one of the Advocates-Depute, four counsel who correspond to the Junior Treasury counsel on the Common Law side and the Chancery side of the English Bar, and who, like the latter, have a recognised customary right to be placed eventually on the Bench. In 1896 Scott Dickson became Solicitor-General. In 1903 he became Lord-Advocate. In 1906 the defeat of his party brought him back to Edinburgh and the Scots Bar, from which he had been somewhat detached by political considerations for the previous few years. He found a new group of formidable young advocates coming to the front, among whom it is only necessary to mention Alexander Ure (the late Lord-President, Lord Strathclyde), Clyde, Salvesen (both now Lords of Session), and Sir Robert Horne, now Chancellor of the Exchequer. The old gladiator, however, soon showed that he had lost none of his fire or his extraordinary rapidity of thought and utterance; in a little he had cantered back into his old place of undisputed priority at the Scots Bar. He held it until his elevation to the Bench, as Lord Justice Clerk in 1913. From 1908 to 1913 he enjoyed the much coveted post of Dean of the Faculty of Advocates, the elective head of the Scots Bar. For the Lord-Advocate, unlike the Attorney-General in England, has no status within the Bar as such; in fact he is theoretically a member of the Court of Session. He became at once famous as one of the very soundest, wisest, and broad-minded of judges. He also showed unexpected originality in one important respect. As a judge presiding over criminal trials he steadily refused to advise juries as to the view they should take of the facts. He held that the jury must hear the evidence and come to their own conclusions on the facts, unbiassed by judicial prompting; it was his duty to the jury merely to direct them on the law and call their attention to the evidence.

In an able summary of Scott Dickson's career contained in a recent issue of *The Times*, the writer sets out Scott Dickson's merits in language so admirable that we propose to copy it here. " Tactful and terse as a pleader, Scott Dickson's record was one of strenuous and unremitting hard work. During his legal apprenticeship, he was wont to spend his evenings not in the conning of professional lectures, but in the study of reported cases. His marvellous knowledge of case law was partly attributable to the fact that, while a student, he mastered the facts and formulated a decision upon them before reading the judge's opinions in the reports. It was his habit when at the Bar to read his briefs in the early morning. He took, and seemed to need, little physical exercise, beyond the constant pacing of his study, yet his mental activity was such that he disposed of work with remarkable rapidity.

Without disrespect to those who preceded and have succeeded him as Dean, his professional brethren unanimously testify that no man has ever better fulfilled the duties of that office. The charm of his personality, his freedom from affectation, and his deep interest in every advocate, old or young, peculiarly fitted him for the occupancy of the Dean's chair; and, notwithstanding the many claims upon his time, he never hesitated to place his vast experience at the disposal of any member of the Faculty.

As a judge (*The Times* goes on to say), Lord Scott Dickson was as successful as he had been at the Bar, and soon after his

appointment, the Rolls of the Second Division, over which he presided, showed a marked increase. He was, as Henry Glassford Bell said of Lord Neaves :—

> Clear in his office, faithful, just,
> More pleased to bless than ban,
> And proving that the soundest law
> Comes from the kindliest man."

Like many other great advocates, Scott Dickson did not achieve in the House of Commons the same high reputation as a speaker which was his at the Bar. But in this he only resembled the famous Erskine, Russell of Killowen, Sir Edward Clark, and many another famous master of forensic evidence. Indeed, even such many-sided men of affairs as Lord Reading and Sir John Simon, in our own time, although not unsuccessful in the House of Commons, have never attained the front rank there. Sir Hugh Cairns and Sir Edward Carson seem to be almost the only eminent counsel who spoke equally well in the House of Commons and at the Bar. There is a difference of atmosphere between the forum and the senate which seems to require a distinct type of excellence to attain first-rate success in each. But Scott Dickson won the respect of the House as a political lawyer at once delightfully genial and transparently sincere. In office he was never accused of nepotism or of undue bias in favour of his own party. His extraordinary kindliness of heart and manner made him an universal favourite.

Res Judicatæ.

Administration *ad colligenda* in Alien Enemy Cases.

(*Re May*, 38 T.L.R. 210 ; *Re Busche*, 1922, P. 27.)

Two recent cases, relating to the administration of estates personal by alien enemies in England, should be noted. In *Re May* (38 T.L.R. 210), a German domiciled in Germany died entitled to a debt from an English firm due before the war. Under the provisions of the Treaty of Peace Order, 1919, such a debt can only be paid through the Clearing Office. The question then arose how the Controller of the Clearing Office was to claim for this debt against the English debtor, and it was decided that he must do so by taking out administration *ad colligenda bona*, limited to that debt alone. This can be done by an application to the Registrar at the Principal Probate Registry ; it is not necessary to proceed by motion in Court—the procedure approved in *Re Bluhm* (1921, P. 127), but varied in the present case. *Re Busche* (1922, P. 30) was a case of a German who died during the war possessed of property in England. The Public Trustee had received in the usual way a grant of administration *ad colligenda*; he collected the assets in England, paid the estate duty and the English claims, and had in his hands a considerable surplus. Notice was given him of a German will, and he communicated with the executors and beneficiaries who were German. The assets were held to be subject to the charge (in favour of English creditors of Germans) created by the Treaty of Peace Order of 1919, s. 1, c. 4 (xvi); and these have precedence over the claims of the beneficiaries under the will. The Public Trustee applied for the enlargement of his administration *ad bona colligenda* into a full order of administration *cum testamento annexo*. It was held that this procedure was the proper one and the order was made as prayed for. Of course, the Public Trustee would be under the same obligation as a private trustee or beneficiary to deal with the assets subject to the statutory Treaty charge in accordance with the requirements of the Clearing House Rules and the Treaty of Peace Orders.

The Condition of "Customer's Sole Risk."

(*Rutter* v. *Palmer*, *ante* p. 576.)

Liability for damage done to a bailed article during bailment is still one of the most obscure portions of the Common Law : indeed, bailment generally is one of the least understood of the special contracts. Where A has bailed an article with B, terms which involve the performance of acts on the bailed commodity by B, the latter clearly has a two-fold liability for negligence : first, he is responsible if the article is lost or injured in the ordinary course of affairs by his negligence, or that of his servants, and, again, he is responsible if he injures the article in any special way by performing without proper skill the work upon it which he has contracted to do. This is plain sailing. But complications arise when exceptions to the responsibility are introduced by an express condition of the contract ; this was done in *Rutter* v. *Palmer* (*supra*). Here a motor-car owner bailed his car to a dealer by leaving it at the latter's garage to be sold for him on commission. The signed deposit-note had a condition in these words : "Customer's cars are driven by our staff at customer's sole risk." Now, in order to succeed in selling the car, the garage-manager had to send it out for a drive with the intending purchasers under the charge of one of his own chauffeurs. In the course of these duty-drives, the car was damaged through the negligence of the chauffeur. The question was whether the garage-proprietor was liable for this damage to his client, the owner of the car, or whether it was within the exception clause as damage done to the car while driven at "customer's risk." *Primâ facie*, it looks at if the exception clause quoted above had been intended to apply to third party risks and contemplated cases in which a stranger had been injured by the driver's negligence in handling the car, not direct damage to the car by his negligence. The Court, however, put the broad interpretation on the term and held that it exonerated the garage-proprietor from the operation of the rule *respondeat superior*.

Approbation and Reprobation.

(*Union Bank of Australia, Limited*, v. *McClintock*, 1922, 1 A.C. 240 1 P.C.)

It is not very often that the doctrine which forbids one both to approbate and to reprobate, gets applied in a common law case, so that *Union Bank of Australia, Limited* v. *McClintock* (*supra*), where this did happen, is of special interest. Here the manager of a firm had a private account with the bank named. Acting in fraud of his employers and without their authority, this manager presented to the firm's bank cheques drawn by his firm on the firm's account. These were honoured by giving him bank drafts, for equivalent amounts, drawn by the bankers on themselves, payable to bearer and crossed, "not negotiable." The manager paid these drafts in to his private account with the defendant bank, who collected the amounts from the firm's bankers. On discovery of the fraud, the firm sued the manager's bank for conversion of the drafts by crediting them to him. At first sight this seems a clear ground of action, since the drafts were made "not negotiable," so that the holder in due course cannot set up "negotiability" as an answer to the original defect in title of their customer for whom they collected the drafts. But here a subtlety arises. In order to sue the manager's bank for the amount of the drafts, the firm had to contend that the drafts represented moneys obtained by him for the firm. This involves a ratification of his unauthorised act in obtaining the drafts in exchange for the cheques. But, once this act is ratified, then his subsequent action—in collecting through a bank, as he was compelled to do by the form of the drafts, which were crossed—must by necessary implication be ratified as well. Hence the crediting of the amounts to his cheque must be ratified. But, if so, the firm cannot both "approbate" the crediting of the drafts to the manager's private account, and "reprobate" their payment out to him by honouring his cheques. This is rather subtle reasoning, but it convinced the Judicial Committee, who overruled the Supreme Court of New South Wales and found in favour of the bank.

Correspondence.

Arrest by Plain-clothes Policemen.

[To the Editor of the Solicitors' Journal and Weekly Reporter.]

Dear Sir,—I have read—as I always do with your paper—with much interest, the article in your last issue, as to arrests by "Plain-Clothes" Policemen.

Would not the difficulty referred to in your article be got rid of if, as they do in America, the plain-clothes policemen or detectives wore an easily distinguishable badge?

21st August. J. LIVINGSTONE WOOD.

[The difficulty is that badges can easily be counterfeited. Plain-clothes policemen possess insignia of their authority which they must produce if required. But the bogus detective finds it easy to do the same.—ED. *S.J.*]

The Legal Practitioners Bill.

[To the Editor of the Solicitors' Journal and Weekly Reporter.]

Dear Sir,—At the Annual Meeting of the Law Society the President stated that the Legal Practitioners Bill for the fusion of the two Branches of the profession had been dropped.

As the Hon. Secretary of the Legal Committee formed to promote "fusion," I would like to point out that this is not so. The Bill was simply "crowded out." Members will ballot again next Session.

The Bill is not only supported by Sir T. Bramsdon, Major Barnes, Sir W. Joynson Hicks, Major Christopher Lowther, Sir G. Renwick, Sir T. Polson, Sir W. Seager, and Mr. Sugden, as M.P.'s, but by a number of other members inside the House, and by men and public bodies outside.

I shall be glad if you will kindly insert this letter so that any misapprehension caused by the statement of the President may be removed.

22nd August. HARVEY CLIFTON.

Counsel's Fees.

[To the Editor of the Solicitors' Journal and Weekly Reporter.]

Sir,—In your issue of the 12th inst. appears a letter from Mr. Charles L. Samson in which he writes that where a "star" Counsel was briefed who demanded a very large fee a suitor was obliged by the etiquette of the Bar to give the other Counsel briefed with him fees bearing a certain proportion to his fee.

Is he quite correct?

Last year when deciding an application to vary a Taxing Master's Certificate, Mr. Justice P. O. Lawrence, whilst upholding the etiquette mentioned in ordinary cases, made a qualification to the effect that where a "star" Counsel was briefed it would not be contrary to the etiquette of the bar for the Junior to agree to have marked on his brief a fee which was in fact less than two-thirds of that marked on his leader's brief.

The case in question was reported, page 259 of *The Weekly Notes*, but for some reason the reporter did not include in his report this qualification which the learned Judge made.

We were concerned in the case and in Court at the time and subsequently on the 28th July last wrote the Secretary of the Law Society reporting what Justice P. O. Lawrence had so stated.

In face thereof surely the remedy is in the hands of suitors and their Solicitors.

86 Newington Butts, S.E.11. J. W. CHESTER.
23rd August.

Mr. Wilfred Baugh Allen, of Rosemount, Tenby, Pembroke, until recently for many years County Court Judge of the Nottingham Circuit, and at one time practising on the South-Eastern Circuit, author of several legal publications, who died 10th June, aged 73, son of Mr. George Baugh Allen, of Kilrhiw, Pembrokeshire, left property of the gross value of £18,266, of which £13,913 is net personalty. The testator left the whole of the property to his widow absolutely.

Obituary.

Mr. William Mallett.

We regret to announce the sudden death of Mr. William Mallett, on the 19th inst. at Buxton while on his vacation. He had been over forty-six years with Messrs. Janson, Cobb, Pearson & Co., of 22 College Hill, E.C., and for the last thirty years their Chancery Managing Clerk.

New Orders, &c.

Procedure.

The Rules of the Supreme Court (Reduction of Capital), 1922. Dated July 28th, 1922.

(*Continued from page* 723.)

APPENDIX L.—FORMS.

No. 30. FORM OF ORDER. [O. 53B. r. 4 (3).]

IN THE HIGH COURT OF JUSTICE. CHANCERY DIVISION. Mr. JUSTICE .
In the Matter of the Company, Limited and Reduced;
and in the Matter of "The Companies (Consolidation) Act, 1908."

Upon the application of the petitioners by summons dated , and upon hearing the solicitor for the petitioners, and on reading the petition presented to the High Court of Justice, it is Ordered, that an enquiry be made what are the debts, claims, and liabilities of or affecting the said company on the day of , 19 , and that notice of the presentation of the said petition and of the list of creditors be inserted in [the newspapers] on the day of , and [other times of insertion].

No. 31. AFFIDAVIT VERIFYING LIST OF CREDITORS. [O. 53B. r. 6.].

(Title of Court as in Form 30.)
In the Matter of the Company, Limited and Reduced; and
in the Matter of "The Companies (Consolidation) Act, 1908."

I, *A.B.*, of , make oath, and say as follows:—

1. The paper writing now produced and shown to me, and marked with the letter A., contains a list of the creditors of and persons having claims upon the said company on the day of , 19 (the date of the presentation of the petition herein), together with their respective addresses, and the nature and amount of their respective debts or claims, and such list is, to the best of my knowledge, information, and belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not, at the date aforesaid, any debt claim or liability which, if such date were the commencement of the winding-up of the said company would be admissible in proof against the said company other than and except the debts and claims set forth in the said list. I am enabled to make this statement from facts within my knowledge as the of the said company, and from information derived upon investigation of the affairs and the books, documents, and papers of the said company.

Sworn, &c.

List of Creditors referred to in the last Form.

A.

In the Matter of the Company, Limited and Reduced; and in the Matter of "The Companies (Consolidation) Act, 1908."

This list of creditors marked A. was produced and shown to *A.B.*, and is the same list of creditors as is referred to in his affidavit sworn before me this day of 19 . *X.Y.*, &c.

Names, Addresses, and Descriptions of the Creditors.	Nature of Debt or Claim.	Amount or estimated value of Debt or Claim.

(*To be continued.*)

Winding-up Notices.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

CREDITORS MUST SEND IN THEIR CLAIMS TO THE LIQUIDATOR AS NAMED ON OR BEFORE THE DATE MENTIONED.

London Gazette.—FRIDAY, August 18.

THE BROMLEY FURNITURE STORES LTD. Sept. 16. Percy Leifer, 26, The Broadway, Bromley.

NATIONAL SUGAR BEET ASSOCIATION LTD. Oct. 2. J. F. Spencer Cridland, 26, Victoria-st., Westminster.

SUSSEX CRISP COMPANY LTD. Sept. 7. T. H. Waterhouse, 51, Devonshire-rd., Bexhill-on-Sea.

TEMPERANCE CAFES LTD. Sept. 20. Gordon D. West, 10, Cook-st., Liverpool.

THE PORTLAND ROAD TAXI SUPPLY LTD. Sept. 22. Edmund C. Wright, 55 Victoria-st., Westminster.

N. FERRIS & CO. LTD. Aug. 31. Thomas F. Grundy, 40, Brazennose-st., Manchester.

S. H. HIND & CO. LTD. Sept. 25. Frank Merchant, 2, St. Peter's Church-walk, Nottingham.

Resolutions for Winding-up Voluntarily.

London Gazette.—FRIDAY, August 18.

Lang & Sons, Ltd.
Wiltshire Agricultural Co-Operative Society Ltd.
G. T. Tetlow, Ltd.
A. Farrow Ltd.
Eastern Motor Co. (Hull) Ltd.
Emanuel Shaw & Co. Ltd.
The Northern Motor Co. (1919) Ltd.
The Second Model Housing and Estates Association Ltd.
Plowden and Thompson (R. H.) Limited.
Powell & Prince Ltd.
The Kettering Employers' Indemnity Co. Ltd.
N. H. Phelps & Co. Ltd.
Ruby Cycle Co. Ltd.
Temperance Cafés Ltd.
Clitherow and Co. Ltd.
Castle Donington New Industries Co. Ltd.

Bankruptcy Notices.

RECEIVING ORDERS.

London Gazette.—FRIDAY, August 18.

AIRD, RONALD W., Old Woking, Surrey, Builder. Guildford. Pet. July 21. Ord. Aug. 15.

ASTROP, ARTHUR E., Woking. Guildford. Pet. July 21. Ord. Aug. 15.

BAIRNSFATHER, T. D., Thame, Oxford. Aylesbury. Pet. July 25. Ord. Aug. 16.

BAKER, THOMAS, Crawley, Sussex, Jeweller. Brighton. Pet. Aug. 16. Ord. Aug. 16.

BARNES, WILLIAM H., Castle Gresley, Derby, Colliery Deputy. Burton-on-Trent. Pet. Aug. 16. Ord. Aug. 16.

BEVIS, GEORGE M., Mountfields, Shrewsbury, Commission Agent. Shrewsbury. Pet. Aug. 15. Ord. Aug. 15.

BISHOP, CECIL G., Thetford, Norfolk, Farmer. Norwich. Pet. July 21. Ord. Aug. 16.

BORROWS, WILLIAM H., Werrington, Northampton, Engineer. Peterborough. Pet. Aug. 14. Ord. Aug. 14.

BROCKLEBANK, FRANK, Osset, Furniture Dealer. Dewsbury. Pet. Aug. 14. Ord. Aug. 14.

BUTLER, HARRY F. and BUTLER, FRANK, Nottingham, Timber Merchants. Nottingham. Pet. July 31. Ord. Aug. 14.

BUTTERWORTH, WILLIAM E., Oldham, Operative Cotton Spinner. Oldham. Pet. Aug. 15. Ord. Aug. 15.

CARTWRIGHT, MARY, Liverpool, Draper. Liverpool. Pet. July 20. Ord. Aug. 14.

CHELDREN, RAYMOND A., Ipswich, General Manufacturer. Ipswich. Pet. Aug. 8. Ord. Aug. 8.

CLEMAS, THOMAS, Pentre, Poultry Dealer and Fruiterer. Pontypridd. Pet. Aug. 15. Ord. Aug. 15.

CORDEROY, T. H., Kingston-upon-Hull. Kingston-upon-Hull. Pet. Aug. 1 Ord. Aug. 15.

CRAGOE, ALFRED S., Liskeard, Mining Engineer. Plymouth. Pet. April 26. Ord. Aug. 14.

DALTON, JAMES, Salford, Cycle and Gramophone Dealer. Salford. Pet. Aug. 16. Ord. Aug. 16.

DE RENZI, JANIE V., Mevagissey. Truro. Pet. Aug. 3. Ord. Aug. 14.

DUNN, JAMES, Malvern Wells, Worcester. Pet. July 22. Ord. Aug. 15.

ENTWISTLE, WILLIAM E., Leeds, Baker. Leeds. Pet. Aug. 16. Ord. Aug. 16.

HALKETT, CRAIGIE, Berwick-upon-Tweed. Newcastle-upon-Tyne. Pet. July 29. Ord. Aug. 14.

HALL, RALPH V. and HALL, LILIAN R. K., Staple Hill, Glos., Dairy Farmers. Bristol. Pet. Aug. 16. Ord. Aug 16.

HUTCHINSON, ARTHUR, Whitley Bay, Quantity Surveyor. Pet. Aug. 12. Ord. Aug. 12.

JUKES, ARTHUR H., Tipton, Staffs, Accountant. Dudley. Pet. Aug. 15. Ord. Aug. 15.

KENYON, ALBERT, Waterfoot, Lancs, Licensed Victualler. Blackburn. Pet. Aug. 15. Ord. Aug. 15.

LANCASTER, GEORGE A., Hanley, Staffs, Butcher. Hanley. Pet. Aug. 16. Ord. Aug. 16.

LEFEVRE, JOHN N., Maidstone, Business Transfer Agent. Maidstone. Pet. May 29. Ord. Aug. 9.

MCCOULL, WILLIAM JO., North Shields, Grocer. Newcastle-upon-Tyne. Pet. Aug. 1. Ord. Aug. 14.

MCLEMAN, ROBERT, Newcastle-upon-Tyne, Baker. Newcastle-upon-Tyne. Pet. Aug. 14. Ord. Aug. 14.

MINERS, A.B., Belsize Park-gardens, N.W., Contract Manager. High Court. Pet. March 9. Ord. Aug. 16.

MORLAND, WILLIAM, Chopwell, Durham, Miner. Newcastle-upon-Tyne. Pet. Aug. 15. Ord. Aug. 15.

MORLEY, JOE A., Bradford, Cloth Merchant. Bradford. Pet. Aug. 14. Ord. Aug. 14.

NEWBITT, FREDERICK M., Egham, Commercial Traveller. Windsor. Pet. Aug. 15. Ord. Aug. 15.

REASONS, OLIVER J., Brent Knoll, Somerset, Farmer. Bridgwater. Pet. Aug. 16. Ord. Aug. 16.

ROBERTS, THOMAS, and HIBBS, LAWRENCE E., Manchester, Engineers and Ironfounders. Ashton-under-Lyne. Pet. Aug. 14. Ord. Aug. 14.

SEYMOUR, WILLIAM G., Coberley near Cheltenham, Jobbing Builder. Cheltenham. Pet. Aug. 16. Ord. Aug. 16.

SHARPE, JOHN T., Boston, Lincs, Box Maker. Boston. Pet. Aug. 15. Ord. Aug. 15.

SIBSON, JOHN, Bramhall, Chester, Incorporated Accountant. Manchester. Pet. Aug. 15. Ord. Aug. 15.

SIBTHORP, SHURMER, Southampton-street, Holborn, Financier. High Court. Pet. July 10. Ord. July 31.

THOMAS, DAVID, Liversedge, Yorks, Brace and Belt Manufacturer. Dewsbury. Pet. Aug. 1. Ord. Aug. 14.

TOWNSEND, GEORGE, H., Cockshutt, near Ellesmere, Farmer. Wrexham. Pet. Aug. 14. Ord. Aug. 14.

TUNNICLIFFE, FREDERIC, C., Penarth, Solicitor. Cardiff. Pet. Aug. 16. Ord. Aug. 16.

WATKINS, WILLIAM M., Penycae, Brecknock, Licensed Victualler. Neath. Pet. Aug. 3. Ord. Aug. 16.

WEBB, REBECCA, Woking, Proprietress of a Private School. Guildford. Pet. Aug. 16. Ord. Aug. 16.

WHITE, HARRY, Huddersfield, Greengrocer. Huddersfield. Pet. Aug. 15. Ord. Aug. 15.

WILLIAMS, WILFRED, Hollinwood, Lancs, Coal Merchant. Oldham. Pet. Aug. 3. Ord. Aug. 15.

WOODS, JOHN H., Gorleston-on-Sea, Waterman. Great Yarmouth. Pet. Aug. 15. Ord. Aug. 15.

Hospitals and Charitable Institutions.